IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.888 OF 2001

Dr.Moreshwar Vaman Patwardhan .. Petitioner.

Versus

Central Bureau of Investigation

and Anr. .. Respondents.

Shri. Nitin Pradhan i/b. Shri. Prakash Naik for the petitioner.

Shri.R.F.Lambey, P.P. for Union of India.

Shri.Y.M.Nakhwa, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE OF RESERVING THE JUDGEMENT : 19/01/2007.

DATE OF PRONOUNCEMENT OF THE JUDGEMENT : 09/04/2007.

JUDGEMENT : -

1. By this Writ Petition under Article 226 of the Constitution of India, the petitioner challenges the order dated 16th January, 2001 passed by the Special Judge under Prevention of Corruption Act on Miscellaneous Application No.157 of 2001 in Special Case No.13 of 1996.

2. In other words, the petitioner prays that he must be discharged from this Special Case.

3. It is not in dispute that the application for discharge, preferred on 23rd April, 2001 is for discharge of the petitioner/accused No.1 from Special Case No.13 of

1996.

4. There are about 29 accused persons in this Special Case. The petitioner is Accused No.1 along with three superior officers of the Bank of Maharashtra. The other accused are companies and partnership concerns so also their directors and partners.

5. The company M/s.Stretch Fibres (India) Limited accused No.13, was incorporated on 18th January, 1965 by one Harkishore Jain and others. This company and its sister concerns had accounts with Bank of Maharashtra, Fort Branch, Bombay and at this branch, the other companies and firms associated with M/s.Stretch Fibres also had their accounts.

6. The petitioner joined the Bank of Maharashtra in 1947. He worked on various positions and prior to 1977 was working as General Manager (Operation) at Bank of Maharashtra, Pune. He was Chairman and Managing Director from 1977 till 1983. A complaint was lodged by one Shankar Yashwant Pradhan alleging commission of several offences, under Penal Laws, by Senior Bank Officials and the account holders. Pursuant to the directions given by

this Court, the said complaint was treated as FIR. The investigation was made over to CBI, SIU (IX) New Delhi, which registered the case as R.C.No.2(A) & 3 of 1991. After completion of investigations, a charge-sheet was laid in the Special Court, Mumbai. The petitioner in this petition at Para 5 has summarized the prosecution case. The petitioner has also annexed a copy of the FIR at Annexure 'A'. The FIR sets out the facilities which were extended to the company M/s.Stretch Fibres and the details of the bills which were discounted but dishonoured by the drawees. According to the FIR, even after the bills were dishonoured, the Bank of Maharashtra gave monies to the group. According to the FIR, the common pattern is that Bank of Maharashtra went on giving money to Jain Group on the pretext of having discounted the bills. Several illustrations are given and all details set out. The Bank of Maharashtra has filed several suits on these bills. The allegation is that after 1978, Bank's staff and Business Group colluded and prepared bogus bills and the Bank of Maharashtra paid huge sums to Jain Group showing discounting of the bogus bills. Various letters have been relied upon and ultimately a reference is made to certain observations of a Division Bench of this Court in Appeal No.1240 of 1986 in Summary Suit No.2271 of 1985, decided

on 16th January, 1987. It is alleged by the complainant that the wrongful loss to the Bank of Maharashtra is to the tune of Rs.121.71 crores. It is in the light of the complaint of Shri.Pradhan and the directions of the Division Bench, that FIR was registered. It is alleged that the acts on the part of the concerned person constitute commission of offences punishable u/s.120 B r/w. 420, 468, 471 of IPC and Sec. 5(2) r/w.Sec.5(1)(d) of P.C.Act, 1947.

7. The contention on behalf of the petitioner before the Trial Court was that by merely presiding over the Meetings of the Board of Directors will not link the petitioner to the offence of conspiracy with other bank officials. The argument was that the petitioner cannot be charged with offences as alleged and the grant and disbursement of monies to the S.F.Group of companies.

8. This argument has been rejected by the Trial Court and the Trial Court held that the petitioner was holding the highest position in the Bank in the year 1983 and even prior thereto, he held responsible positions. He was aware of the manner in which various accounts of S.F.Group of Companies were maintained. The Trial Court held that

despite being aware of the acts of officers-accused Nos.2 to 4, he sanctioned various facilities to the defaulting group of companies. The learned Judge was of the opinion that the petitioner accused No.1 was obliged to safeguard the interest of the Bank and this having not been done, prima-facie, there is a case made out against the petitioner-accused No.1. The Trial Court has relied upon the communications under which the acts of the borrower were brought to the notice of the petitioner and the note of one Shri.Sane dated 9th September, 1982. Thus, apart from communications to the petitioner, the Trial Court relied upon other materials and concluded that a prima-facie case is made out against the petitioner-accused No.1.

9. It is this order of the learned Special Judge, which is challenged in the present petition.

10. Shri.Pradhan, learned counsel appearing for the petitioner submits that the order of the learned Judge is ex-facie erroneous and deserves to be quashed and set aside. He submits that the prosecution must be confined to the sanction order dated 7th April, 1996. He submits that in the FIR, there is no role attributed to the

petitioner. Further, the complaint which is made the base for registering the FIR does not attribute any role to the petitioner. He submits that the petitioner is 83 years of age. It is pertinent to note that all decisions have been taken by the petitioner bonafide. He submits that the claims of the Bank have been fully settled.

11. That apart, according to Shri.Pradhan going by the principles of Sec.34 of I.P.C. and assuming that the FIR discloses commission of offences, yet, the decision taken to sanction credit limit to S.F. Group of Companies was a collective decision. That was taken by the entire Board. The petitioner cannot be singled out. If everybody shares the common intention, then, other members of the Board ought to have been charge-sheeted. The petitioner, who is the Managing Director, cannot be solely held responsible. That apart, he submits that no action has been taken on the basis of the investigations, which have been ordered by this Court. He submits that some officers have been prosecuted, leaving alone the beneficiaries of the subject transactions. Even otherwise, he submits that the entire case is based upon erroneous reading of the order of this Court. For all these reasons, he submits that the Rule be made absolute and the impugned judgement be quashed and

set aside.

12. On the other hand, Shri.Lambe, appearing for the respondents submits that a prima-facie case has been made out against the petitioner. He invites my attention to the affidavit, which has been filed by the C.B.I. and submits that there is a specific role attributed to the petitioner. He submits that the report of Shri.Sane would made it clear that the petitioner actually assisted the Stretch Fibres Group of Companies. He also relies upon the order passed by this Court. He submits that the adverse financial and audit report about the company was suppressed by the petitioner thereby misleading the Board. He submits that there is a clear allegation of pecuniary advantage. The offence alleged is serious. Public interest is at stake. He submits that this is not a case for discharge or exercise for inherent powers. Shri.Lambe submits that the age of the petitioner is wholly irrelevant. The petitioner applied for stay of the trial, which was granted for a temporary period by this Court. Thus, the accused is at fault and the delay is not because of any act of the prosecution. Shri.Lambe handed over the gist of the statements of the witnesses. Shri.Lambe has relied upon the following decisions in support of his

submissions : -

1] AIR 2000 S.C. 665 (State of M.P. v/s. S.B.Johari).

2] 1980 S.C.C. (Cri.) 493 (Shivnarayan Laxminarayan Joshi v/s. State of Maharashtra).

13. For properly appreciating the rival contentions, it would be appropriate to refer to the prosecution case. The charge-sheet, which has been filed on 27th June, 1996 refers to the investigations being carried out and as far as the petitioner is concerned, it is alleged thus : -

> "i): That investigation revealed that M/s.Stretch Fibres (I) Ltd. (A-16) and M/s.Stretchion Pvt. Ltd. (A-17) had been availing the bank facilities from Bank of Maharashtra in the form of Working Capital, Term Loan and Bank Guarantee, etc. since 1972 and Bank of Maharashtra was forced to make payments to other banks or financial institutions. But, due to non-availability of old records, the investigation was restricted for the offences committed with effect from 1.1.80 onwards.

However, Mr.M.V.Patwardhan (A-1) had been functioning as Chairman-cum-Managing Director during the period 1.10.1977 to 12.8.1983 and prior to that, he was the General Manager (Operations) of Bank of Maharashtra. He was well aware about the accused group of companies and their financial position even before 1.1.1980.

This is evident from the fact that he had presided over the meeting held on 14.9.1977 as the General Manager (Operations), Central Office, Pune, which reviewed the accounts of the accused group of companies, M/s.Stretch Fibre (I) Ltd. and M/s.Stretchion Pvt. Ltd., and during the meeting, various discrepancies were noticed in all the bank facilities availed by them. Apart from the above, he also presided over various Board meetings in which, the critical position of accounts of the accused group of companies were discussed. He wrote a letter dated 2.8.1979 to Mr.S.K.Wankhede, the then Director, M/s.Stretch Fibres (I) Ltd., requesting him for assistance to regularize the accounts of the companies.

6: That in the letter dated 25.4.1980, addressed to Dr.M.V.Patwardhan (A-1), M/s.S.R.Batliboi, Chartered Accountant, pointed out the miserable financial position of M/s.Stretch Fibres (I) Ltd. (A-13) and its sister concerns, i.e. M/s.Stretchion Pvt. Ltd., M/s.Har Kishore Jain & Sons, M/s.Rib Tapes (India) Pvt. Ltd., M/s.Srawlon Sales Corporation, M/s.Satish Dyeing & Printing Works, M/s.International Enterprises and M/s.Stretch Fibre Agency and observed that -

a) The financial position of accused group of companies was vulnerable because the company's borrowing had exceeded all reasonable norms and it would take long numbers of years before the company can start repayment subject to the condition that the company could manage its affairs efficiently.

b) The accused group of companies used to sell their products through their sister concerns but they defaulted in making payments and the accused group of companies did not take any legal

action against their sister concerns or against the parties who have failed to meet their obligation.

7: That Dr.M.V.Patwardhan (A-1) knowingly and deliberately did not place the aforesaid letter and the report of M/s.Batliboi & Co. before the board of Directors on 23.5.1980 and in the note dated 23.5.1980 prepared for the Board Meeting, it was misrepresented that the plant and machinery of the company is of high standard and is capable of yielding enough surplus to cover the entire excess borrowing from the Bank.

8: That even after receipt of the letter and report of M/s.S.R.Batliboi & Co., which gave adverse report against the party, he allowed or caused to be allowed the sanction of credit limit to the accused companies without securing the interest of the Bank. During the period from 1.1.80 to 12.8.83, an amount of Rs.1480.00 Lacs were sanctioned by S.M.Chitnis (A-3) and Mr.R.S.Kothare (A-4) without any restriction, with connivance of Accused No.1 in furtherance of the

conspiracy, which is authenticated by suppression of letter dated 25.4.80 of M/s.Batliboi & Co., Chartered Accountant, by accused No.1 before the Board of Directors, on 23.5.80 and in a Note dated 23.5.80 prepared for the Board meeting.

9: That the personal knowledge of Dr.M.V.Patwardhan (A-1) was also proved from the letter dated 1.9.1980, addressed to R.K.Talwar, Chairman, IDBI, where he has mentioned about the affairs of the company and its sister concerns. He has also requested Mr.Talwar to convene the institutional meeting for finalizing the financial pattern. In this letter, he has also made a reference of payment against guarantee to ICICI. This proves that he was having full knowledge that the company was in bad financial position and the Bank was forced to make the payments against the Bank Guarantee issued to ICICI since the company failed to make the payments.

10: That a mention is there in the sanction letter dated 15.06.82 for allowing the discounting of bills of M/s.Satish Dyeing for Rs.7.50 lacs but

later the lines mentioning the reference of the Chairman & Managing Director were crossed out. Dr.M.V.Patwardhan (A-1) surreptitiously kept himself behind the screen but got all the wrongful credit facilities allowed through Mr.S.M.Chitnis (A-3) to Jain family group of companies/firms with dishonest intentions and obviously for ulterior motives.

11: It is evident from the note dated 25.8.82 and 29.06.82 prepared by Mr.R.S.Kothare (A-4) and put up by Shri.S.M.Chitnis (A-3) relating to form a Credit Control Cell for monitoring the difficult accounts including the accounts of accused group of companies which was approved by Dr.M.V.Patwardhan (A-1). Shri.S.M.Chitnis (A-3) was allowed to head the Credit Control Cell and to select the Officers of his choice, whereas, Mr.S.M.Chitnis was himself allowing the overdrawals by the accused companies.

12: That Dr.M.V.Patwardhan (A-1) took undue interest in giving advantage to the accused group of company is evident from the letter dated 1.7.82

of H.K.Jain (A-5) addressed to the Dy.General Manager, Bank of Maharashtra, Mumbai. In this letter, it was clearly mentioned that Mr.Surendrakumar Jain (A-7) met the Chairman & Managing Director on 17.6.82 for securing banking facilities upto Rs.35.00 Lacs of non-fund nature. The Chairman & Managing Director, Dr.M.V.Patwardhan (A-1) agreed to extend the facilities to the extent of Rs.15.00 Lacs to Rs.20.00 Lacs in the accounts of M/s.Stretchion Pvt. Ltd. (A-17). This clearly proves abuse of official position by Dr.M.V.Patwardhan (A-1) to give undue pecuniary advantage to the Jain family through their companies/firms."

14. Thus, it is alleged that the petitioner conferred financial benefits and deliberately and intentionally omitted to take any action to restrict the overdrawing by the accused company. The charge-sheet points out that the correspondence and other documents mentions about the approval of the petitioner to the transactions and facilities. Thus, his role is prima-facie specific and clear. In this behalf, reliance is rightly placed by Shri.Lambe on the note of Shri.Sane. It cannot be said at

this prima-facie stage that the petitioner had absolutely no role nor it could be held that he was totally unaware of the actions of the other officers of the Bank. I find much substance in the contention of Shri.Lambe that this is not a case for discharging the petitioner from the Special Case. Equally, there is substance in Shri.Lambe's contention that this Court did not direct that sanction be accorded for investigation/prosecution of the accused. This Court only directed that the case be investigated in accordance with law. The challenge to the sanction order cannot be considered by me at this stage for the aforesaid reasons. The Trial Court was considering the application for discharge on the basis of the averments in the Discharge Application. The Trial Court has summarised the allegations and rightly rejected the arguments of the petitioner. It is not possible to hold at this stage that the petitioner was not connected with sanction of any facilities in favour of the S.F.Group of Companies. The arguments, which were canvassed before the Special Judge have been reiterated before me by Shri.Pradhan. The Trial Judge has noted these contentions at Paras 7 and 9 of the impugned order and held that a prima-facie case is made out against the petitioner. It has referred to the materials produced at the prima-facie stage at Paras 12 to

14 of the impugned order. In such circumstances, so also the petitioner holding the highest position being duty bound to act in public interest and as a guardian of public funds, no fault can be found with the prima-facie conclusion reached by the Trial Court. These conclusions being only prima-facie, the petitioner will have sufficient opportunity in law at the trial to prove his innocence. At this stage, it will not be fair to hold, without anything further that there is no material at all to connect the petitioner with the offences alleged.

15. It is not necessary to refer to the principles, which have to be applied while considering an application of the present nature, in details. Shri.Lambe has rightly placed reliance upon the decision of the Supreme Court reported in **AIR 2000 S.C. 665** and more particularly Para 4 thereof. The principles for invoking inherent powers of this Court are also well settled and equally their application. **[See AIR 2006 S.C. 2872 (Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS & Anr.)]**. In the light of the fact that the powers u/s.482 have to be exercised sparingly and considering the nature and seriousness of the charges and earlier directions of this Court, it is not possible for me to uphold the contentions

of Shri.Pradhan that the petitioner has been singled out for such a treatment. For the very reasons, I am not in the position to hold that merely because the petitioner is of advanced age, the proceedings in the Special Case should be quashed. In any case, I am bound by the earlier direction of this Court.

16. One cannot forget that the prosecution is for the offence of cheating, forgery and corruption. The purpose of inserting such provisions in Penal Laws and their applicability to persons occupying public offices and posts, highly placed and wielding enormous powers has been succinctly pointed out by the Hon'ble Supreme Court in **R.Sai Bharathi v/s. J.Jayalalitha & Ors. reported in AIR 2004 SC 692**. In paras 58 and 61, the Hon'ble Supreme Court observes thus : -

> "58: Crime is applied to those acts, which are against social order and are worthy of serious condemnation, Garafalo, an eminent criminologist, defined 'crime' in terms of immoral and anti-social acts. He says that "crime is an immoral and harmful act that is regarded as criminal by public opinion because it is an injury

to so much of the moral sense as is possessed by a community - measure which is indispensable for the adaptation of the individual to society." The authors of the Indian Penal Code stated that : -

"..... We cannot admit that a Penal Code is by any means to be considered as a body of ethics, that the legislature ought to punish acts merely because those acts are immoral, or that, because an act is not punished at all, it follows that the legislature considers that act as innocent. Many things which are not punishable are morally worse than many things which are punishable . The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in passion, or breaks a window in a frolic, yet we have punishment; for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow-creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard-heartedness.

61: Report leading to IPC makes it clear that criminal law merely prescribes the minimum standards of behaviour, while in public life, those who hold high offices should not take shelter under the umbrella of criminal law but stand by high probity. Further criminal law is meant to deal with criminals ordinarily, while Code of Conduct is observed as gentlemen's agreement. Persons in public life, who are gentlemen, follow such Code instead of taking escape routes by resorting to technical pleas as arise in criminal cases. Persons in public life are expected to maintain very high standards of probity and, particularly, when there is likely to be even least bit of conflict of interest between the office one holds and the acts to be done by such person, ought to desist himself from indulging in the same. Such standards of behaviour were scrupulously observed in the earlier days after independence, but those values have now dwindled and instances of persons holding high elective offices indulging in self-aggrandisement by utilising Government

property or in distribution of the largesse of the Government to their own favourites or for certain quid pro quo are on the increase. We have to strongly condemn such actions. Good ethical behaviour on the part of those who are in power is the hallmark of a good administration and people in public life must perform their duties in a spirit of public service rather than by assuming power to indulge in callous cupidity regardless of self imposed discipline. Irrespective of the fact whether we reach the conclusion that A-1 is guilty of the offences with which she is charged or not, she must atone for the same by answering her conscience in the light of what we have stated not only by returning the property to TANSI unconditionally but also ponder over whether she had done the right thing in breaching the spirit of the Code of Conduct and giving rise to suspicion that rules and procedures were bent to acquire the public property for personal benefit, though trite to say that suspicion however strong cannot take place of legal proof in a criminal case and take steps to expiate herself."

17. Apart from this, in an earlier decision of the Hon’ble Supreme Court while expressing their concern regarding increasing number of cases of corruption and bribery involving public servants, a two Judge Bench of the Apex Court made the observations as under : -

(AIR 2000 S.C. 870) (State of Madhya Pradesh v/s. Shri.Ram Singh).

> **"**7: Corruption in a civilised society is a disease like cancer, which if not detected in time is sure to maliganise the polity of country leading to disastrous consequences. It is termed as plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as Royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at

the earliest, it is likely to cause turbulence shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.

8: The menace of corruption was found to have enormously increased by first and second world war conditions. The corruption, at the initial stages, was considered confined to the bureaucracy, who had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war, the opportunities for corruption continued as large amounts of Government surplus stores were required to be disposed of by the public servants. As consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them wide discretion with the result of luring them to the glittering shine of the wealth and property. In order to consolidate and amend the laws relating to prevention of corruption and

matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988, a new Act on the subject being Act No.49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of 1947 Act. The law relating to prevention of corruption was essentially, made to deal with the public servants, as understood in the common parlance but specifically defined in the Act.

9: The Act was intended to make effective provision for the prevention of bribe and corruption rampant amongst the public servants. It is a social legislation defined to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object.

10: Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required

to be kept in mind while interpreting various provisions of the Act and decided cases under it."

. Such observations have been made on earlier occasions while outlining the object and purpose of the Prevention of Corruption Act. It is, therefore, in public interest that the cases under Prevention of Corruption Act are decided without any procedural and technical obstacles and hindrances.

18. In my opinion, it is for the petitioner, who held highest position in Bank, to decide as to whether these standard of ethics expected from him are wholly irrelevant. He cannot in the above facts and circumstances escape from being tried of the offences alleged by raising technical pleas. So also, on the ground that the dues of the Bank are now allegedly settled. It is open for him to raise all pleas at the trial which I am sure would be duly considered. However, keeping in mind the fact that the P.C. Act, 1947 or 1988 is a Social Law aimed at preventing bribery and corruption amongst public servants so also in the facts of this case, the request for discharging the petitioner cannot be accepted.

19. In the result, the writ petition fails. Rule is discharged. However, considering the advanced age of the petitioner, it would be just, fair and proper if the learned Judge to whom the is assigned endeavours to dispose of Special Case No.13 of 1996 as expeditiously as possible. He should do so uninfluenced by any observations in the impugned order so also in the present judgement and strictly on merits and in accordance with law. The contentions of both sides in that behalf are expressly kept open.

(S.C.Dharmadhikari, J.)